

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING

Minutes

June 2, 2016

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, June 2, 2016 at 1:30 p.m., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Carol Neugent, Chair; David Dennis, Vice Chair; John Dailey; Bob Dool; Matt Goolsby; Bill Ellison; David Foster; Joe Johnson; John McKay Jr.; Bill Ramsey; Lowell Richardson; John Todd and Chuck Warren. Members absent were: Debra Miller Stevens. Staff members present were: Dale Miller, Director; Bill Longnecker, Senior Planner; Scott Knebel, Senior Planner; Jess McNeely, Senior Planner; Kathy Morgan, Senior Planner; Derrick Slocum, Administrative Supervisor; and Sharon Dickgraft, Assistant City Attorney.

1. Approval of the April 21, 2016 Planning Commission Minutes.

MOTION: To approve the April 21, 2016 Planning Commission minutes.

DENNIS moved, **JOHNSON** seconded the motion, and it carried (10-0-2). **GOOLSBY** and **WARREN** – Abstained.

2. **CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

There were no Subdivision Items.

3. **PUBLIC HEARING – VACATION ITEMS**

There were no Vacation Items.

PUBLIC HEARINGS

4. **Case No.: ZON2016-00020** - Friends University (owner) and Selective Site Consultants (agent) request a City Protective Overlay Amendment to remove the Delano Overlay on a parcel in U University Zoning for a wireless communication tower on property described as:

COMMENCING at the Northwest Corner of said Section 30 (Found 1/2" Pipe); thence along the North line of said Section, North 88°39'56" East, a distance of 1128.26 feet; thence leaving said Section line, South 01°20'04" East, a distance of 393.34 feet to the POINT OF BEGINNING; thence South 01°46'40" East, a distance of 438.94 feet; thence North 88°42'59" West, a distance of 36.33 feet; thence South 00°44'58" East, a distance of 160.51 feet; thence South 33°15'36" West, a distance of 131.10 feet; thence South 89°26'22" West, a distance of 377.01 feet; thence North 01°13'57" West, a distance of 568.28 feet; thence North 63°25'12" East, a distance of 319.81 feet; thence North 89°51'37" East, a distance of 195.71 feet to the POINT OF BEGINNING. Containing 311,011± square feet (7.14± acres).

CHAIR NEUGENT announced that this item has been deferred indefinitely.

5. **Case No.: CON2016-00010** - Arthur, Sondra and January Bailey (owners/applicants) request a City Conditional Use for an Accessory Apartment in TF-3 Two-family Residential zoning on property described as:

Lots 2, 4, 6, 8, 10, 12 and the West Half of Lot 14 together with ½ of the vacated alley adjacent on the South, Davis Addition, Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicants request a Conditional Use for an “accessory apartment” on property zoned TF-3 Two-family Residential. The site is located at the southeast corner of East 2nd Street and North Rutan. The property is currently developed with a single-family residence on the 0.53-acre site. A four-car garage and an in-ground swimming pool have recently been demolished in order to build the new garage with a second story apartment. There is an existing drive access from East 2nd Street. This site is listed in the Wichita Register of Historic Places, the Register of Historic Kansas Places and the National Register of Historic Places. The owners filed application to the Wichita Historic Preservation Board to request demolition of the non-original four-car garage and the in-ground pool and approval of the design for the new garage/apartment structure. The Historic Preservation Board approved the proposed project with the stipulation that a conditional use for an accessory structure be obtained.

The property is surrounded by residential zoning developed with single-family structures to the north, west and south, and two-family structures to the east. West of the site is zoned TF-3, north is TF-3 and SF-5 Single-Family residential, east of the site is zoned TF-3, and south of the site is zoned SF-5.

The Wichita-Sedgwick County Unified Zoning Code (“UZC”) defines an “accessory apartment” (Art. II.Sec. II-B.1.b) as a dwelling unit that may be wholly within, or may be detached from a principal single-family dwelling unit. Accessory apartments are also subject to supplementary use regulation Art. III.Sec.III-D.6.a (1) a maximum of one accessory apartment may be allowed on the same lot as a single-family dwelling unit that may be within the main building, within an accessory building or constructed as an accessory apartment; (2) the appearance of an accessory apartment shall be compatible with the main dwelling unit and with the character of the neighborhood; (3) the accessory apartment shall remain accessory to and under the same ownership as the principal single-family dwelling unit, and the ownership shall not be divided or sold as a condominium and (4) the water and sewer service provided to the accessory apartment shall not be provided as separate service from the main dwelling. Electric, gas, telephone and cable television utility service may be provided as separate utility services.

The TF-3 zoning district property development standards call for a minimum rear setback of 20 feet for principal structures; however, accessory structure rear building setback (Sec. III-D.7.e(1)) shall be at least ten feet from the centerline of any platted or dedicated alley, and if no alley exists, then five feet from the rear lot line; accessory structures may be within three feet of a side lot line if on the rear half of the property. Accessory structures may not utilize more than one-half of any required rear yard, and shall not exceed 60 percent of the allowable height limit for the zoning district unless the accessory structure conforms to principal structure setback requirements. The TF-3 zoning district maximum height is 35 feet, 60 percent of which is 21 feet. The UZC parking standards require one off-street parking space per single-family residence and one per accessory apartment. The submitted site plan conforms to UZC requirements.

CASE HISTORY: The subject property has two associated city cases. Protective Overlay H76-21 designating the historic Senator Chester Long House in the Wichita Register of Historic Places and associated city case BZA2006-91 allowing a rear setback reduction to 16 feet.

ADJACENT ZONING AND LAND USE:

NORTH:	TF-3, SF-5	Single-family residential
SOUTH:	SF-5	Single-family residential
EAST:	TF-3	Two-family residential
WEST:	TF-3	Single-family residential

PUBLIC SERVICES: The property is serviced by all publicly supplied municipal services. East 2nd Street is a three-lane one-way arterial street and Rutan is a local paved street at this location.

CONFORMANCE TO PLANS/POLICIES: The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the site as within the Established Central Area - the downtown core and mature neighborhoods surrounding it in a roughly three-mile radius. The Plan encourages infill development within the Established Central Area that maximizes public investment in existing and planned infrastructure and services. The residential category encompasses areas that reflect the full diversity of residential densities and types, including apartments. The Plan's *2035 Wichita Future Growth Concept Map* identifies this location as residential.

RECOMMENDATION: The surrounding area has well-established residential land uses. This site is 165.5 feet wide and 135 feet deep, and therefore has enough room to accommodate the accessory apartment and associated parking. Existing tree growth on the site partially screens the accessory apartment from neighboring properties. Based on information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The Conditional Use permits one single-family accessory apartment on the site. The site shall be developed and maintained in general conformance with the approved site plan, the approved elevation drawing, and in conformance with all applicable regulations, including but not limited to: local zoning, including Article III, Section III-D.6 .a.(1)-(4); building, fire and utility regulations or codes.
2. An approved site plan for the entire lot and an elevation drawing approved by planning staff, indicating dimensions and exterior materials.
3. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VII hereof, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The property is surrounded by residential zoning developed with single-family structures to the north, west and south, and two-family structures to the east. West of the site is zoned TF-3, north is TF-3 and SF-5 Single-Family residential, east of the site is zoned TF-3, and south of the site is zoned SF-5.

2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned TF-3 which permits the existing single-family residence. The property's zoning would permit construction of a duplex on the site; however, the accessory apartment allows the same number dwelling units while preserving the historic use of the structure. The dimensions of the property easily accommodates an accessory apartment and the additional required parking space.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request should not detrimentally impact nearby properties. The accessory apartment site is well screened from neighboring lots. The conditions of approval should minimize any anticipated detrimental impacts.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the site as within the Established Central Area - the downtown core and mature neighborhoods surrounding it in a roughly three-mile radius. The Plan encourages infill development within the Established Central Area that maximizes public investment in existing and planned infrastructure and services. The residential category encompasses areas that reflect the full diversity of residential densities and types, including apartments. The Plan's *2035 Wichita Future Growth Concept Map* identifies this location as residential.
5. Impact of the proposed development on community facilities: If this request is approved, the site is served by municipal services that are able to accommodate projected demand created by this request.

KATHY MORGAN, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

JOHNSON moved, **TODD** seconded the motion, and it carried (13-0).

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6. **Case No.: CON2016-00011** - William and Sue Hartman (applicants/owners) request a County Conditional Use for a Recreational Vehicle Campground in RR Rural Residential zoning on property described as:

BACKGROUND: The applicant is seeking a Conditional Use approval for a "recreational vehicle campground" (RV campground) on the approximately 9.81-acre, RR Rural Residential (RR) zoned unplatted subject site. It is the applicant's intention to place a single recreational vehicle on the site and use it in lieu of a permanent structure. In short, the RV will substitute for a building and will be used as a country residence or hunting cabin.

Sec. II-B.14.e. of the Wichita-Sedgwick County Unified Zoning Code ("UZC") defines a "recreational vehicle", as a unit designed as temporary living quarters for recreational, camping or travel use that has a body width not exceeding eight feet and a body length not exceeding 40 feet. Units may have their own power, or designed to be drawn or mounted on a "motor vehicle." Recreational vehicle shall

include motor homes, travel trailers, truck campers, camping trailers, converted buses, houseboats or other similar units as determined by the Zoning Administrator. A recreational vehicle may or may not include individual toilet and bath.

The UZC Sec. III-D.7.b.(4) lists garages, carports and private parking areas as residential accessory uses; therefore, parking of motor vehicles in residential districts is an accessory use, requiring a principal use or structure. Sec. III-D.7.b.(12) indicates the parking for more than 72 hours and / or the storage of certain motor vehicles and equipment in the County is permitted: (a) The following accessory uses shall be permitted in the unincorporated area of the County when such are the personal property of the occupant of the dwelling unit and are screened as specified in Section 19-22 of the Sedgwick County Code: 1) parking and/or storage of motor vehicles whether operable or inoperable and 4) parking and / or storage of unoccupied recreational vehicles.

The parking of a non-agricultural vehicle on RR zoned property that does not have a principal structure is prohibited. The UZC recognizes the following definitions dealing with parking: “parking” means the temporary location of motor vehicles (except for vehicles, inoperable), boats, trailers and unoccupied recreational vehicles.

“Parking area, ancillary” means an area other than a private or commercial parking area, street or alley that is located in any district from the most restrictive through NO (neighborhood office) inclusive, and that is used for the parking of passenger vehicles as accessory parking to a principal use that requires the same or more intensive district than the district in which the ancillary parking area is located. Parking area, ancillary, requires a Conditional Use in the RR zoning district.

“Parking area commercial” means an area or structure used or intended to be used for the off-street parking of operable motor vehicles on a temporary basis, other than as accessory parking to a principal nonresidential use. Parking area, commercial is first permitted in the GO General Office zoning district.

“Parking area private” means an area, other than a street or alley, used or intended to be used for the parking of the motor vehicles, boats trailers that are exempt from motor vehicle registration by the state or are registered or are required by law to be registered with Kansas 8M license plates in the County, and unoccupied recreational vehicles, any of which shall be owned, leased, borrowed, etc. by the occupants of a dwelling unit that is located on the same zoning lot, and wherein not more than one commercial vehicle per dwelling unit is parked and the permitted commercial vehicle does not exceed 26,000 pounds gross vehicle weight rating.

“Vehicle storage yard” means the keeping outside of an enclosed building for more than 72 consecutive hours of one or more motor vehicles (except inoperable vehicles), boats, trailers, or unoccupied recreational vehicles. Vehicle storage yard is permitted in the RR district with Conditional Use approval, but is subject to supplementary use regulations.

Based upon the definitions noted above, the proposed placement of the applicant’s occupied RV on land not having a principal structure could not be construed to be some form of parking or storage, staff concluded the most logical approach to the circumstances was to call the activity a ‘recreational vehicle

campground.” Recreational vehicle campground means the use of land designed for occupancy by recreational vehicles for temporary or transient living purposes, including the use of camping spaces for tents.” A recreational vehicle campground is permitted in the RR district with Conditional Use approval.

The site is located a half-mile southwest of the Kansas Highway K-15 – East 71st Street South/Meadow Lark Boulevard intersection. Access to the site is off of the intersection and then through a small, older (generally built 1950s-1970s) mostly single-family residential neighborhood located approximately 600 feet east of the site and in the City of Derby. RR zoned county properties abut the site’s north, east and south sides. Google Earth shows what appears to be two accessory structures located on the north abutting property, which the Sedgwick County Appraiser’s Office identifies as “accessory residential unit.” The other abutting properties appear not to be developed. The County suburban scale SF-20 Single-Family Residential (SF-20) zoned Huckleberry Addition (recorded October 15, 1989) is located approximately 770 feet north of the site. The Arkansas River abuts the west side of the site. The City of Wichita’s SF-5 zoned South Arkansas Greenway Park is located west, across the Arkansas River from the site. The site and all of the abutting properties are located within the 100-year Floodplain.

CASE HISTORY: Access to the site is through the abutting east private properties and is provided by a dedication of a private right-of-way that was never recorded; dated May 28, 1971. However, a “ratification of dedication private right-of-way” was recorded with the Sedgwick County Register of Deeds February 29, (cannot make out the year), Film 2019 – Page 0233.

ADJACENT ZONING AND LAND USE:

NORTH: RR, SF-20	Accessory building(s) undeveloped/agriculture, suburban scale single-family residential development
SOUTH: RR	Undeveloped/agriculture
EAST: RR	Undeveloped/agriculture, residential neighborhood located in the City of Derby
WEST: SF-5	Arkansas River, Public Park

PUBLIC SERVICES: No public sewer is available to the site. The site is located within Sedgwick County Rural Water District #3. There does not appear to be any franchised utilities available to the site. As already noted access to the site is through the abutting east private properties and is provided by a dedication of a private right-of-way.

CONFORMANCE TO PLANS/POLICIES: The site is located in the City of Derby’s Urban Area of Influence, which allows Derby 30 days to make a recommendation on the request upon notification of the request. The 30 days begins on the early warning notices generated by the Metropolitan Area Planning Department (MAPD), which is sent to the small cities, the Sedgwick County Board of County Commissioners and the Wichita City Council Districts. The City of Derby has not placed this request on their May 19, 2016 Planning Commission agenda, but the MAPD has sent out notices to those properties located within 1,000 feet of the site and did attend the Derby meeting to answer any questions on the off-agenda item. No one attended the Derby Planning Commission with questions regarding the request and no recommendation was made by the Derby Planning Commission.

The City of Derby's 2006 Comprehensive Plan projects the site and the area around the site as future park open space and outside of the near and future growth areas of Derby. Park open space land is identified as woodlands, land within floodplains and golf courses. The site and all of the abutting properties are located within the 100-year Floodplain. The Derby Plan also shows the site as potentially part of a regional park along the Arkansas River, which complements the City of Wichita's South Arkansas Greenway Park located west of the site across the Arkansas River.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the Conditional Use request be APPROVED, subject to the following conditions:

1. The Conditional Use permits a recreational vehicle campground for one recreational vehicle. The recreational vehicle must be moved every 6-months, per FEMA regulations, and the owner must notify the Metropolitan Area Building and Construction Department when the recreational vehicle is ready to be moved.
2. No waste disposal on site. Water can be provided by well, per Sedgwick County Code.
3. Legal access to the site has to meet service drive code requirements.
4. The recreational vehicle campground shall be developed and maintained in general compliance with the approved site plan. All improvements and the operation of the recreational vehicle campground shall be in compliance with applicable local, state or federal regulations and codes, including FEMA Floodplain requirements for uses within the 100-year floodplain.
5. The Conditional Use for a recreational vehicle campground for one recreational vehicle shall be declared null and void upon issuance of a certificate of occupancy for a permanent structure on the approved site; or, after a period of five (5) years from the date said Conditional Use is approved by the appropriate Governing Body, subject to the granting of additional extensions following appropriate review and approval.
6. If the Zoning Administrator finds that there is a violation of any of the conditions of approval of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The site is located a half-mile southwest of the Kansas Highway K-15 – East 71st Street South/Meadow Lark Boulevard intersection. Access to the site is off of the intersection and then through a small, older (generally built 1950s-1970s) mostly single-family residential neighborhood located approximately 600 feet east of the site and in the City of Derby. RR zoned county properties abut the site's north, east and south sides. Google Earth shows what appears to be two accessory structures located on the north abutting property, which the Sedgwick County Appraiser's Office identifies an "accessory residential unit." The other abutting properties appear not to be developed. The County suburban scale SF-20 zoned Huckleberry Addition (recorded October 15, 1989) is located approximately 770 feet north of the site. The Arkansas River abuts the west side of the site. The City of Wichita's SF-5 zoned South Arkansas Greenway Park is located west, across the Arkansas River from the site. The site and all of the abutting properties are located within the 100-year Floodplain.

2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned RR which permits, by right, single-family residences, manufactured home, group home and a few non-residential uses such as day care, limited, parks, golf course and agriculture. The site could be used as currently zoned, just not as conveniently or inexpensively as proposed.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request will introduce a use that is not currently in the area; however, the scale requested and the recommended conditions of approval should mitigate any detrimental impacts.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: The public's health and safety should not be impacted by the request. Denial of the request could represent a loss in use and enjoyment to the applicant's property.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The City of Derby's 2006 Comprehensive Plan projects the site and the area around the site as future park open space and outside of the near and future growth areas of Derby. Park open space land is identified as woodlands, land within floodplains and golf courses. The site and all of the abutting properties are located within the 100-year Floodplain. The Derby Plan also shows the site as potentially part of a regional park along the Arkansas River, which complements the City of Wichita's South Arkansas Greenway Park located west of the site across the Arkansas River.

The site is located in the City of Derby's Urban Area of Influence, which allows Derby 30 days to make a recommendation on the request upon notification of the request. The 30 days begins on the early warning notices generated by the Metropolitan Area Planning Department (MAPD), which is sent to the small cities, the Sedgwick County Board of County Commissioners and the Wichita City Council Districts.

6. Impact of the proposed development on community facilities: None identified.

BILL LONGNECKER, Planning Staff presented the Staff Report. He reported that the City of Derby chose not to present the application to the Planning Commission; however, the Derby Planning Commission date and time was published on the Public Hearing Notice for the case. He said the Derby Planning Commission chose not to hear the item, and he added that no one came to that meeting to ask questions about the case.

WARREN clarified that this location is in the Flood Zone so the applicant can't build a deck or other structure. He also asked how far the applicant is required to move the vehicle per FEMA Regulations.

LONGNECKER reiterated that this location was in the Flood Zone. He said he did not know the answer to what distance the vehicle needs to be moved and added, that where and when the vehicle is moved will be worked out with MABCD. He mentioned that ultimately the property owner would like to build a permanent residence on the site. He said at that time they will be required to do a drainage study.

ELLISON asked if the property floods.

LONGNECKER said the applicant can answer that question.

FOSTER asked if the applicant will need a map revision for the Floodplain to build at the location.

LONGNECKER responded yes, which will happen during the platting.

WILLIAM HARTMAN, 2213 CARRIAGE DRIVE, DERBY, KANSAS said the river is currently up because of recent rain; however, it has not encroached onto the property. He said there are a couple of areas of standing water in the low areas of about four inches with the largest one being about 20 feet in diameter. He said the RV will be used for recreation while they are trying to develop the area. He said they have applied to the City of Derby to hook into their sewer system so eventually they will have utilities established on the property. He said until that happens they will take the tanks of grey and black water down to the Derby disposal site.

DAILEY asked how far the RV needs to be moved every six months. He also asked if the applicant was in agreement with staff recommendations.

HARTMAN advised that MABCD has informed him that at another location the RV owners drive their RV's around the campground once every six months and park them right where they were at. He said he was in agreement with staff comments.

RICHARDSON clarified that staff would have to verify that the vehicle had been moved.

HARTMAN said that was correct.

FOSTER asked the applicant if the City of Derby has asked them to sign a waiver of annexation.

HARTMAN said they have been approached and have not signed the document but have no problems with that happening.

MOTION: To approve subject to staff recommendation.

DENNIS moved, **RAMSEY** seconded the motion, and it carried (13-0).

7. **Case No.: CON2016-00012** - Justin Doll and Art Agner (applicants) and Baughman Co., PA c/o Russ Ewy (agent) request a City Conditional Use for a Nightclub in LC Limited Commercial zoning on property described as:

Lots 1 through 11, odd inclusive, Block A, South University Place Addition to Wichita, Kansas;
EXCEPT for road rights-of-way of record.

BACKGROUND: The application area, 1602 South Meridian, is located at the southeast corner of Meridian Avenue and Harry Street in LC Limited Commercial (LC) zoning and within 300 feet of residential zoning. The site is developed with a one-story building and over 30 off-street parking spaces. The City is rebuilding this intersection which will include closing two access points closest to the corner. The applicant's site plan (see attached) demonstrates a minimum of 35 parking spaces when complete. The County Tax Assessor lists "bar/tavern/lounge" as the current land use. A drinking establishment has functioned on the site as a legal non-conforming use for many years. The applicant wishes to obtain an entertainment license and therefore requests this conditional use for a "nightclub in the city." Nightclub in the city is defined by the Unified Zoning Code (UZC) as an establishment that provides entertainment and/or dancing, where alcoholic beverages are served and where food may or may not be served. The UZC permits a nightclub in the city in the LC zoning district by right, but requires a conditional use if the property is located within 300 feet of a church, park, school or residential zoning district. The application area is across an alley from residential zoned properties on South Sedgwick Street. Residential zoned properties within 300 feet of the application area are developed with a mixture of multi-family, duplex and single-family residences.

Property north, west and south of the site are zoned LC and developed with retail, warehousing, vehicle repair, vehicle sales and multi-family residential uses. Property east of the site is zoned TF-3 and developed with single-family and duplex residences.

CASE HISTORY: The site was platted as odd Lots 1 through 11, Block A of the South University Place Addition to Wichita in 1887. The building on the site was constructed in 1952.

ADJACENT ZONING AND LAND USE:

North: LC	Multi-family residential
South: LC	Retail
East: TF-3	Single-family and duplex residences
West: LC	Retail, vehicle sales, warehousing and vehicle repair

PUBLIC SERVICES: Meridian is a paved major arterial street with four lanes and a central turn lane at the intersection. Harry is a minor arterial with two lanes and an eastbound central turn lane at the intersection. All other urban utilities and services are available.

CONFORMANCE TO PLANS/POLICIES: The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the site as within the Established Central Area - the mature neighborhoods within an approximate three-mile radius of the downtown core. The Plan's 2035 *Wichita Future Growth Concept Map* identifies this location as "residential" but adjacent to areas identified as "commercial," "industrial" and "new employment." The UZC requires one parking space per two seats for nightclubs. The applicant indicates that the site has an occupancy of 80 people. The applicant's site plan demonstrates a minimum of 35 parking spaces, therefore the applicant requests a five-space reduction as a part of the conditional use.

RECOMMENDATION: Staff notes that a drinking establishment has existed on this site for some time. This application does not introduce a new use to this location, and the use does not appear to be incompatible with the residential zoning east of the site. Staff notes that the site lacks UZC required screening from the residential properties across the alley to the east. Based upon the information available prior to the public hearings, planning staff recommends that the request for a Conditional Use for a Nightclub in the City be **APPROVED**, with the following conditions:

- (1) The applicant shall submit a revised site plan, to be approved by planning staff, which identifies screening between the site and residential properties across the alley to the east.
- (2) The site shall be developed and maintained in conformance with the approved site plan.
- (3) The site shall maintain a minimum of 35 parking spaces.
- (4) No outside loudspeakers or outdoor entertainment is permitted.
- (5) The site shall maintain all necessary licenses for a nightclub in the city.
- (6) The site shall conform to all applicable codes and regulations to include but not limited to zoning, building, fire and health.
- (7) If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Property north, west and south of the site are zoned LC and developed with retail, warehousing, vehicle repair, vehicle sales and multi-family residential uses. Property east of the site is zoned TF-3 and developed with single-family and duplex residences.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned LC and developed with a building previously used as a bar. The site could be used as zoned for other commercial uses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is zoned LC and could be developed with any range of permitted uses in that district. The proximity of residential zoning east of the site triggers the conditional use review for a nightclub. Noise and activity from the nightclub could impact the residential neighborhood to the east; proposed conditions of screening and prohibiting outdoor speakers/entertainment should mitigate this impact. The request does not introduce a new use in the neighborhood. The limited size of the site and building will prevent expansion beyond a neighborhood scale, and proposed conditions should mitigate impacts on surrounding properties.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial of the request would presumably be an economic hardship upon the property owner, as the applicant owns the property and desires to operate the proposed business within LC zoning.

5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the site as within the Established Central Area - the mature neighborhoods within an approximate three-mile radius of the downtown core. The Plan's 2035 *Wichita Future Growth Concept Map* identifies this location as "residential" but adjacent to areas identified as "commercial," "industrial" and "new employment." The UZC requires one parking space per two seats for nightclubs. The applicant indicates that the site has an occupancy of 80 people. The applicant's site plan demonstrates a minimum of 35 parking spaces, therefore the applicant requests a five-space reduction as a part of the conditional use.
6. Impact of the proposed development on community facilities: The proposed Conditional Use should not impact community facilities to any greater extent other uses permitted in the LC zoning district.

JESS MCNEELY, Planning Staff presented the Staff Report.

JOHNSON asked about parking and access to the south.

MCNEELY reiterated that the UZC requires 40 spaces; however, the applicant is asking for 35. He said access to the south is through a cross lot agreement with the adjacent property owner.

RICHARDSON asked staff to describe the screening required. He added that the alley is in pretty poor shape right now. He asked if the applicant would be required to pave that if they are going to use it for their main access.

MCNEELY said the applicant could provide screening from the southeast corner to a driveway and then north of the driveway to Harry Street. He added that in the past staff has also allowed the building to be the screening when it is located this close to the property line so that might be an option as well. He said screening per the UZC is a 6-8 foot fence. He said staff did not see improvement to the alley as something to be addressed with a conditional use request, since the conditional use application is triggered by the proximity of the location to residential zoning.

DAILEY commented that the lights of everyone that exits the site onto the alley are going to flash into the residences east of the location.

MCNEELY indicated that the UZC provides for breaks in the required screening for driveway access. He said the other way to address that might be make the alley right turn only and then onto the Meridian Avenue access.

DAILEY asked if one of the conditions could be to put the screening in the alley.

MCNEELY mentioned that would require a minor street privilege. He said when this has been done before it has been placed on private property with permission of the property owner. He mentioned that staff has received no calls from surrounding property owners concerning the request.

RUSS EWY, BAUGHMAN COMPANY, P.A. 315 SOUTH ELLIS commented that this has been a nightclub/bar since approximately 1954. He said the parking lot is wide open striping with no islands to direct traffic. He said they could obtain a zoning adjustment for the few parking spaces that they are short but they thought they would request a waiver with the conditional use and save the applicant a step. He said the entrance to the current club faces west, but during the redevelopment they will switch the opening to the south with a patio area to the west.

EWY said the property is surrounded by hedges, chain link fencing and a garage that screens the southern portion of the property. He said the business has operated there for over 60 years. He said he thought about asking for a waiver of the screening requirement because a portion of the site is screened by the existing building. He briefly reviewed their proposed screening plan to the east and south of the property.

MOTION: To approve subject to staff recommendation without screening.

TODD moved, **ELLISON** seconded the motion.

SUBSTITUTE MOTION: To approve subject to staff recommendation including screening.

FOSTER moved, **JOHNSON** seconded the motion.

GOOLSBY said this is just not an area that requires screening. He said most of the patrons will probably walk there because it is a neighborhood joint. He said he doesn't want to set a bad precedent but he does not believe screening is necessary in this case.

FOSTER and **JOHNSON** withdrew the substitute motion.

The **ORIGINAL MOTION** carried (13-0).

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8. **Case No.: CON2016-00013** - Steven Enterprise, LLC c/o Brandon Steven (owner) and Baughman Co., PA c/o Russ Ewy request a City Conditional Use for Outdoor Vehicle Sales in LC Limited Commercial zoning on property described as:

Lot 1, Circuit City Addition, Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicant requests a Conditional Use to allow outdoor vehicle sales on a 0.68-acre site in LC Limited Commercial zoning. The site is located south of the Kellogg Expressway, at the southeast corner of East Kellogg Drive and South Eastern Avenue. The vacant site has an off-site billboard advertising sign. The applicant provided site plan (see attached) demonstrates vehicle display areas, parking and a small building. The site plan demonstrates access to Eastern Avenue and shared access with property to the east to Kellogg Drive. Per the Unified Zoning Code (UZC) Sec.III-D.6.x., outdoor vehicle and equipment sales may be permitted after consideration and approval of a Conditional Use on a site by site basis in the LC zoning district subject to the following supplementary conditions:

1. Location shall be contiguous to a major street as designated in the Transportation Plan.
2. Visual screening of areas adjacent to residential zoning districts shall be provided.
3. All parking, outdoor storage and display areas shall be paved with concrete or asphalt. Parking barriers shall be installed along all perimeter boundaries abutting streets to ensure that parked vehicles do not encroach onto public street right-of-way.
4. The lighting shall be in compliance with the lighting requirements of Sec. IV-B.4. No string-type or search lighting shall be permitted.
5. The noise levels shall be in compliance with the compatibility noise standards of Sec. IV-C.6. Outdoor speakers and sound amplification systems shall not be permitted.
6. No repair work shall be conducted except in an enclosed building, and further provided that no body work is done.
7. Only those signs permitted in the LC District shall be permitted on this site, except that no portable, flashing, moving or off-site signs shall be permitted and no streamers, banners, pennants, pinwheels, commercial flags, bunting or similar devices shall be permitted.
8. There shall be no use of elevated platforms for the display of vehicles.

North of the site is the Kellogg Expressway, further north is LC zoning with hotel, retail and warehousing uses. South of the site is a 90-foot drainage easement for Gypsum Creek. Further south is an LC zoned site formerly used for retail and currently used for training and storage. East of the site is a GC General Commercial zoned site under the Community Unit Plan development controls of DP-38 and used for vehicle sales. The vehicle dealership east of the site is under the same ownership as the application area. West of the site is an LC zoned office use.

CASE HISTORY: The site was platted as Lot 1 of the Circuit City Addition to Wichita in 1996. The site was approved for a vehicle rental use exception in 1966 (BZA 10-66). The site has two Sign Code administrative adjustments (BZA2006-90 and BZA2013-34) to raise a billboard and an off-site sign 20 feet above the rail of the adjacent elevated highway.

ADJACENT ZONING AND LAND USE:

NORTH: LC	Expressway, hotel, retail, warehousing
SOUTH: LC	Drainage easement, training, storage
EAST: GC, DP-38	Vehicle sales
WEST: LC	Office

PUBLIC SERVICES: The subject property has direct access to South Eastern Avenue, a two-lane paved local street. The site has access to Kellogg Drive, the Kellogg Expressway service drive, via the bordering property to the east. All other public services are available to the site.

CONFORMANCE TO PLANS/POLICIES: The adopted Wichita-Sedgwick County Comprehensive Plan (the *Community Investments Plan*) 2035 *Wichita Future Growth Concept Map* identifies this location as “commercial,” encompassing areas that reflect the full diversity of commercial development intensities and types typically found in a large urban municipality. Convenience retail, restaurants, small offices and personal service uses are located in close proximity to, and potentially mixed with,

residential uses. Major destination areas (centers and corridors) containing concentrations of commercial and office uses that have regional market areas and generate high traffic volumes are located in close proximity to major arterials or highways and typically are buffered from lower density residential areas by higher density housing types.

The Comprehensive Plan Locational Guidelines make the following applicable recommendations: Major commercial and employment centers should be located at intersections of arterial streets and along highways and commercial corridors. Primary outdoor sales uses should be located along highway corridors or in areas where the uses have already been established. Development abutting the targeted arterials, Kellogg freeway, gateways and landmarks identified on the Priority Enhancement Areas for Wichita Infrastructure Projects Map should consider the inclusion of site design features that increase the sense of quality of life through emphasis of visual character and aesthetic improvements.

RECOMMENDATION: The site is consistent with the Comprehensive Plan and UZC, with the exception that a billboard already exists on the site. Based on the information available prior to the public hearing, MAPD staff recommends the application be **APPROVED**, with the following conditions:

1. The Conditional Use shall be developed and maintained in conformance with the approved site plan.
2. The Conditional Use shall conform to the Unified Zoning Code, Section III-D.6.x supplementary use conditions, except that one previously approved off-site sign shall be permitted on the site.
3. The site shall be developed in conformance with an approved landscape plan consistent with the Landscape Code.
4. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
5. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: North of the site is the Kellogg Expressway, further north is LC zoning with hotel, retail and warehousing uses. South of the site is a 90-foot drainage easement for Gypsum Creek. Further south is an LC zoned site formerly used for retail and currently used for training and storage. East of the site is a GC zoned site under the Community Unit Plan development controls of DP-38 and used for vehicle sales. The vehicle dealership east of the site is under the same ownership as the application area. West of the site is an LC zoned office use.

2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned LC. The property could be used for a number of uses. Limited size, existing easements and platted building setbacks would limit the development options on this site.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: A large vehicle sales business exists east of this site. This application does not introduce a new use in this area. No residential areas are impacted by this location. The proposed conditions should mitigate impacts on the surrounding commercial uses.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The adopted Wichita-Sedgwick County Comprehensive Plan (the *Community Investments Plan*) 2035 *Wichita Future Growth Concept Map* identifies this location as “commercial,” encompassing areas that reflect the full diversity of commercial development intensities and types typically found in a large urban municipality. Convenience retail, restaurants, small offices and personal service uses are located in close proximity to, and potentially mixed with, residential uses. Major destination areas (centers and corridors) containing concentrations of commercial and office uses that have regional market areas and generate high traffic volumes are located in close proximity to major arterials or highways and typically are buffered from lower density residential areas by higher density housing types. The Comprehensive Plan Locational Guidelines make the following applicable recommendations: Major commercial and employment centers should be located at intersections of arterial streets and along highways and commercial corridors. Primary outdoor sales uses should be located along highway corridors or in areas where the uses have already been established. Development abutting the targeted arterials, Kellogg freeway, gateways and landmarks identified on the Priority Enhancement Areas for Wichita Infrastructure Projects Map should consider the inclusion of site design features that increase the sense of quality of life through emphasis of visual character and aesthetic improvements.
4. Impact on Community Facilities: All public facilities are available. The small size of this proposed conditional use should have minimal impact on community facilities.

JESS MCNEELY, Planning Staff presented the Staff Report.

RUSS EWY, BAUGHMAN COMPANY, P.A., 315 S. ELLIS said they are in agreement with staff comments.

CHAD MAVEN, REPRESENTATIVE FOR THE CARPENTER’S UNION said they own the property just south of this location at 8405 East Kellogg. He said staff mentioned a joint access on the east side of the property. He said that is their drive and there is no joint access agreement with the applicant so they will only have one access. He said the problem they are having right now with the car dealership is they drive all the cars the wrong way on the one way street to park them in different spots in the parking lot which is a safety issue for them. He said this will add 60 more spots that they can bring cars to. He mentioned staff’s reference to one off site sign on the property and said their sign/billboard was not shown on the site plan, so there is a sign and a billboard on the property.

CHAIR NEUGENT said they will ask the agent to address the sign issue when they come back to the podium.

FOSTER asked where the sign was located that indicates that the frontage road is one way. He also asked about the easement they have for the billboard and if it was on the northwest corner of the property.

MAVEN said the applicant will be wanting to bring the cars west to put in the parking lot. He said the billboard was located on the northwest corner of the property and that the easement was for 99 years and was recorded with the plat.

EWY said they have no problem showing any easement that has been recorded on the property on the site plan. He said the purpose of the conditional use is not to dictate signage but to show what has been developed on the site to begin with. He commented that they are currently in negotiations with the attorneys for the Union to establish a joint access easement that would allow use of the private drive on the northern most part of the Union's property. He said although an agreement has not been reached, negotiations are on-going.

FOSTER asked Mr. Maven if the negotiations for joint access were news to him.

MAVEN said he understands that the Union has been approached but the applicant wants the Union to give them access for nothing even though the Union will be expected to maintain the drive.

RICHARDSON asked if access was part of the conditional use request.

DIRECTOR MILLER said the site plan is part of the conditional use approval. He suggested if the Planning Commission felt it was appropriate they could add a condition that the applicant not have access to the private drive without proof of an easement agreement that permits them to use the Union's property. He said the Commission could approve the conditional use request and the access could be solved as a civil matter.

FOSTER said he believes the Planning Commission needs to do everything they can to keep this from civil action.

MOTION: To approve subject to staff recommendation with the clarification that the applicant can only have the eastern access point provided they can demonstrate that they have the legal right to use it.

MCKAY moved, **WARREN** seconded the motion, and it carried (13-0).

The Metropolitan Area Planning Commission adjourned at 2:30 p.m.

State of Kansas)
Sedgwick County) ^{ss}

I, W. Dale Miller, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2016.

Dale Miller, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission